

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 24, 2008
POSITION: Neutral

BILL NUMBER: SB 593
AUTHOR: B. Margett
RELATED BILLS: SB 619

BILL SUMMARY: Contract Progress Payments

This bill would eliminate the Department of Transportation's (Caltrans) authority to retain a portion of progress payments due to contractors on a contract until final completion and acceptance of a project.

FISCAL SUMMARY

Caltrans estimates the bill could result in minor savings from no longer having to maintain two payment processes for federally funded projects and state-only funded projects.

Current law permits Caltrans to hold back 5 percent of contract costs from the prime contractor until a project is completed and accepted by Caltrans. These funds and the interest they earn are held in an escrow account, until they are forwarded to the prime contractor upon acceptance of a completed project. Consistent with this, the prime contractor can also hold back 5 percent of a contract value from its subcontractors. Federal law prohibits states from holding back this 5 percent on any projects that use federal funding, so Caltrans employs two different payment processes, depending on whether or not a project is federally funded. Caltrans, in accordance with contracting options allowed by the Federal government, follows a policy of not allowing prime contractors to retain payments from subcontractors on federally-funded projects.

A performance payment bond is also required for all projects and provides protection to ensure that a project will be satisfactorily completed.

COMMENTS

The author's office reports that this bill would make it easier for prime contractors to do business with the state by ensuring quicker payment for completed work.

Existing law sets out the various responsibilities of state agencies in overseeing and implementing state contracting procedures and policies. Existing law requires a department to withhold at least 5 percent of the progress payment until final contract completion and the acceptance of a project.

This bill would eliminate the authority for Caltrans to withhold these funds on transportation projects, which would improve the cash flow of the prime contractor, particularly during a long-term contract. This bill specifies that (1) it applies only to transportation projects, (2) Caltrans shall promptly notify the appropriate Legislative policy committee if the state's best interests are compromised through not retaining 5 percent of the contract sum on transportation projects, and (3) a sunset date of January 1, 2014, for these provisions.

Caltrans indicates, however, that the requirement that a contractor post a performance payment bond would mitigate the risk of contractors failing to complete a project and notes that the posting of these performance bonds is standard procedure when federal funds are involved. The provisions in this bill would align the process for the procurement of projects funded only with state or other non-federal funds with that of federally funded projects, ideally creating operational efficiencies within state operations.

Caltrans indicates a concern that, as written, this bill would not eliminate the authority for a prime contractor to retain payments due a subcontractor on a project funded with state or other non-federal monies. However, Finance notes that the rights and duties of contractors, and subcontractors thereunder, would remain unchanged, meaning that the amount withheld from subcontractors cannot exceed the amount withheld from contractors. Because this bill provides that Caltrans could no longer retain a percentage of the contract costs from the prime contractor, Finance believes that retention from subcontractors would similarly be disallowed.

Analyst/Principal (0753) R. Grimaldi	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

AUTHOR	AMENDMENT DATE
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Form DF-43
BILL NUMBER

B. Margett

June 24, 2008

SB 593

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)								
	LA	(Dollars in Thousands)								
	CO	PROP								Fund
	RV	98	FC	2008-2009	FC	2009-2010	FC	2010-2011	Code	
9901/Var Depts	SO	No		-----	See Fiscal Summary	-----			0001	
9901/Var Depts	SO	No		-----	See Fiscal Summary	-----			0494	
9901/Var Depts	SO	No		-----	See Fiscal Summary	-----			0798	
9901/Var Depts	SO	No		-----	See Fiscal Summary	-----			0988	

<u>Fund Code</u>	<u>Title</u>
0001	General Fund
0494	Other Unallocated Special Funds
0798	Unallocated Bonds Funds - Non Select
0988	Various Other Unallocated NGC Funds